

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: '318 PATENT  
INFRINGEMENT LITIGATION

C.A. No. 05-356 (KAJ)  
(Consolidated)

**DEFENDANT ALPHAPHARM PTY., LTD.'S JOINDER IN BARR'S MOTION TO  
REASSIGN CASE TO PRESERVE THE UPCOMING TRIAL DATE OF THIS ACTION**

Co-defendant Alphapharm Pty., Ltd. ("Alphapharm") joins in defendants Barr Laboratories, Inc.'s and Barr Pharmaceuticals Inc.'s (collectively, "Barr") Motion to Reassign Case to Preserve the Upcoming Trial Date of this Action (the "Motion") (D.I. 327) and respectfully requests that the Court schedule a conference as soon as possible to discuss the appointment of a new judge. Alphapharm appreciates the Court's busy docket, particularly in light of the recent confirmation of Judge Jordan to the Court of Appeals for the Third Circuit, but is concerned that Plaintiffs may attempt to take advantage of these circumstances to preemptively delay the trial in this case.

As indicated in the Motion, Defendants have repeatedly sought Plaintiffs' agreement to consent to the jurisdiction of the Magistrate Judge Thyng for trial of this case, but to no avail. In fact, notwithstanding Magistrate Judge Thyng's earlier stated willingness to preside over this action in all capacities including as trial judge, Plaintiffs have not only refused to consent to Her Honor's jurisdiction, but refused to even join in or otherwise consent to the Motion. Needless to say, Alphapharm, like Barr, consents to the jurisdiction of Magistrate Judge Thyng.

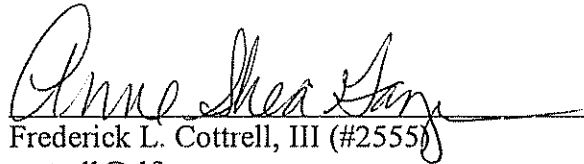
Of course, given the timing of the exclusivity period at issue in this ANDA case, Plaintiffs will surely benefit from any delay in the trial schedule whereas Defendants may well

lose any potential benefit otherwise afforded to them under the applicable statutory provisions. In fact, in the event of a successful defense, Alphapharm as well as Barr will receive the full benefit of the six-month marketing exclusivity that is given to a successful challenger of an Orange-Book listed patent. Thus, Alphapharm as well as Barr would, in the event of a successful defense, be entitled to co-exclusivity, which would be rendered meaningless if Plaintiffs succeed in unfairly delaying the trial. Accordingly, Alphapharm respectfully requests this Court schedule a conference to discuss reassignment of this case in order to preserve the June 2007 trial date.

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Dated: December 13, 2006



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**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2006, I caused to be served by hand delivery and electronic mail a copy of the foregoing and electronically filed the same with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

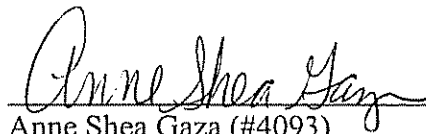
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I further certify that on December 13, 2006, the foregoing document was sent by electronic mail to the following non-registered participants:

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